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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 190

E. E. MORGAN COMPANY, INC.,
Appellant,

vs.

STATE OF ARKANSAS, FOR USE AND BENEFIT OF PHILLIPS COUNTY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

ELMO TAYLOR,
Prosecuting Attorney, First Judicial District of Arkansas,
JOHN L. ANDERSON,
Deputy Prosecuting Attorney Phillips County, Arkansas.
DOUGLAS S. HESLEP,
LEO J. MUNDT,
Counsel for Appellee.

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vs.

STATE OF ARKANSAS, FOR USE AND BENEFIT OF PHILLIPS COUNTY,

Appellee.

STATEMENT OPPOSING JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES.

Statement of Facts.

This action was brought in the Circuit Court of Phillips County, Arkansas, by the appellee, State of Arkansas, for the use and benefit of Phillips County, against the appellant, E. E. Morgan Company, Inc., to recover the statutory penalty provided for in Section 2251 of Pope's Digest of the statutes of Arkansas. The penalty is for the failure to comply with Sections 2247, 2248, 2249, 2250 of Pope's Digest of the statutes of Arkansas, which provide the manner in which a foreign corporation must qualify to do business in the State of Arkansas.

The appellant admitted that it had done levee construction work in Phillips County, Arkansas during the year 1939, that it was a foreign corporation, organized and existing by virtue of the laws of the State of Mississippi, and

that it had not complied with the Arkansas statutes. However, the appellant stated that the work was done pursuant to a contract between it and the United States and that the Arkansas statutes would not apply. Appellant further alleged that if the Arkansas statutes were applied to it, there would be a violation of the Commerce Clause and the due process clause of the Fourteenth Amendment to the Constitution of the United States. To the answer of the appellant the appellee demurred and the Circuit Court of Phillips County, Arkansas, sustained the demurrer. The Supreme Court of Arkansas affirmed the decision of the lower court which had entered judgment against the appellant in the sum of $1,000.00.

Appellee relies upon the following points in support of its contention that this Court has no jurisdiction of this appeal.

1.

The record fails to show that any Federal question involving the Commerce Clause of the Constitution of the United States was necessarily decided by the Supreme Court of Arkansas.

2.

The record fails to show that any Federal question involving a denial of due process of law was necessarily decided by the Supreme Court of Arkansas.

3.

The record does not present for decision any substantial Federal question. A similar question was presented to this Court in the case of *General Construction Company* v. *Earl L. Fisher, et al.*, 149 Ore. 84, 39 P. (2d) 358, 97 A. L. R. 1252. The appeal in that case from the decision of the Oregon Supreme Court was dismissed by this Court for want of substantial Federal question. 292 U. S. 715, 79 L. Ed. 1671, 55 S. Ct. 646. Rehearing denied, 295 U. S. 768, 79 L. Ed. 1709, 55 S. Ct. 828. The decision in that case was to

the effect that a contract between the United States and an independent contractor for gain for the construction of a dam for the United States does not create an agency or instrumentality of the United States.

This Court has held that a contract between the United States and a private corporation, similar to the contract between the United States and the appellant, does not make such corporation a government agency or instrumentality and does not give such corporation any governmental immunity. *Trinity Farm Construction Company* v. *Grosjean,* 291 U. S. 466, 78 L. Ed. 918; *James* v. *Dravo Contracting Company,* 302 U. S. 134, 82 L. Ed. 125; *James Stewart & Company* v. *Sandrakula,* 309 U. S. 94, 84 L. Ed. 596.

The requirement of the Arkansas statutes as construed by the Supreme Court of Arkansas does not render them repugnant to either the Commerce Clause or the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. *Trinity Farm Construction Company* v. *Grosjean,* 291 U. S. 466, 78 L. Ed. 918.

The cases offered by the appellant are not in point in any way as to the question in this case.

It would seem that any question under the Fourteenth Amendment or the Commerce Clause, either as respects the acts or the proceedings, is foreclosed by previous decisions of this Court and is so unsubstantial and frivolous as to justify the motion to affirm, if not the motion to dismiss.

Respectfully submitted,

ELMO TAYLOR,
Prosecuting Attorney, First Judicial District of Arkansas,
By (S.) JOHN L. ANDERSON,
Deputy Prosecuting Attorney, Phillips County, Arkansas, and
(S.) DOUGLAS S. HESLEP,
Counsel for the Appellee.

SUPREME COURT OF THE UNITED STATES
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E. E. MORGAN COMPANY, INC.,
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STATE OF ARKANSAS, FOR THE USE AND BENEFIT OF PHILLIPS COUNTY,
Appellee.

MOTION TO DISMISS THE APPEAL OR AFFIRM THE DECISION OF THE SUPREME COURT OF ARKANSAS.

Now comes the appellee, State of Arkansas, for the use and benefit of Phillips County, and moves to dismiss the appeal herein on the ground that the case presents no substantial Federal question, and appellee further moves, if the motion to dismiss is not granted, that this Court affirm the decision of the Supreme Court of Arkansas on the ground that the questions on which the decision of this cause depends are so unsubstantial as to need no further argument, all as appears in the Statement Opposing Jurisdiction of this Court filed herewith.

Respectfully submitted,

ELMO TAYLOR,
Prosecuting Attorney, First Judicial District of Arkansas,
By (S.) JOHN L. ANDERSON,
Deputy Prosecuting Attorney, Phillips County, Arkansas;
(S.) DOUGLAS S. HESLEP,
LEO J. MUNDT,
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